TDMHDD Law (Title 33) Revision Commission Recommendations

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EXECUTIVE SUMMARY

Title 33 Revision Commission Recommendations

The Title 33 Revision Commission met monthly from November 1998 through January 2000. Its mandate was to perform a comprehensive review of Title 33 and to make recommendations to revise it. The results are contained in Recommendations for Legislative Changes and in Narrative Recommendations. Narrative Recommendations are those which the Commission considered to be very important but which were outside the scope of Title 33, issues of implementation of the current law, or policy concerns to be directed to the Administration and the Department of Mental Health and Mental Retardation (the Department). The recommendations are summarized below. They are not prioritized. Some recommendations are new initiatives; others replace existing law with current practices; and others are responses to current issues.

There are significant changes recommended for the law. But to its credit, much of the original Title 33, as amended since its passage in 1965, is relevant, current, tested and should be maintained. Although some parts of Title 33 remain substantively unchanged, replacing old terms with contemporary language and concepts has resulted in the change of almost every section of Title 33. Word and language changes have been made to dignify the status of people covered by Title 33, to sustain strengths of the law in relevant terms, and to address real shortcomings.

Themes emerged from among the recommendations developed by Study Committees and adopted by the Commission. Among the themes, reflected in the recommendations for legislative change, are these:

- A commitment to meaningful inclusion of consumers and their families in all aspects of planning, developing and monitoring the service systems.
- An expectation for the State to develop and maintain community-based systems comprising a broad array of public and private services and supports which are stable, flexible, responsive to individuals' needs and those of their families and which promote self-determination and personal dignity. This is contrasted with prominence of institutional services in current Title 33.
- Early identification of needs, prevention, and early intervention services and supports as preferred responses for people with mental illness, serious emotional disturbance and developmental disabilities.
- Accurate and responsible accountability for the use of public resources by the Department based on outcomes and other forms of accountability.
- Authority for the Department to set quality standards for services provided for people with mental illness, serious emotional disturbance and developmental disabilities regardless of the provider or government agency with responsibility.
- Commitment to children's issues and structures for interagency cooperation to improve service delivery systems for children.

Recommendations for Legislative Changes include these:

System-wide

- Codify a philosophy of community-based services to support people with mental illness, serious emotional disturbance and developmental disabilities in flexible, most appropriate, typical settings that enhance each person's dignity and ability to thrive; establish principles of service including accountability to the public; and specify responsibilities of the Department and of service providers which accomplish these goals.
- Maintain citizen-based planning and policy development to advise the Department about maintenance and improvement of the service systems and to tie plans to the Department's budget requests.
- Require the Department to set and enforce basic quality standards for all services to people with mental illness, serious emotional disturbance and developmental disabilities.
- Establish a priority for children and their families in the law. Recognize the special status of children with serious emotional disturbance and those with developmental disabilities. (A narrative recommendation about planning, coordination and service development for all children augments this legislative recommendation.)
- Extend licensure requirements to services to people with mental health, serious emotional disturbance and developmental disabilities needs in addition to licensure of facilities.
- Require service providers to have conflict resolution procedures to promote cost effective, quick resolution of consumers' service delivery issues.
- Develop interagency agreements to address the numerous issues in which multiple agencies have involvement in the provision of services to people with mental illness, serious emotional disturbance and developmental disabilities.
- Adopt civil penalties as an additional remedy which is less drastic than closing a service or facility for violations of Licensure rules.
- Recognize that the provisions of the recommendations do not create entitlements to services.

Mental Health Services:

- Authorize new services for people with mental illness who are experiencing severe impairment, a service which permits observation, assessment and treatment under certain conditions for twenty-four (24) to seventy-two (72) hours when psychiatric certification is given.
- Require mandatory prescreening for all hospitalizations for people whose services are publicly funded.
- Extend requirements for treatment review committees to all treatment resources that serve people who are involuntarily committed to assist in decision-making about treatment, confidentiality and other significant matters.

- Permit transportation for involuntary hospitalization by alternative transportation agents working in conjunction with, but other than, sheriffs if the mandatory prescreening agent or certifying physician clears the person for medical and security concerns.
- Provide for mental health consumers to specify advance directives for mental health treatment to be implemented during periods when they are not able to state their preferences.

Developmental Disabilities Services

- Expand coverage of Title 33 to people with developmental disabilities other than mental retardation one year after enactment of the legislation;
- Permit independent review, if necessary, of admissions to residential services for people with mental retardation.
- Provide for mandatory community-based services for people with mental retardation who are charged with a crime, incompetent to stand trial, and not committable to an institution.
- Permit decisions about medical and dental services by surrogates for adults with developmental disabilities due to mental impairment.

Narrative Recommendations include:

Legal issues which span laws in addition to Title 33

- Include laws about Alcohol and Substance Abuse in Title 33. Include representation from the Title 33 Revision Commission in the Task Force which is to review alcohol and substance abuse policy and administration.
- Establish uniform confidentiality requirements and disclosure provisions for all human service professionals.
- Exclude mental health residential treatment facilities from the Certificate of Need law.
- Review and update or remove reimbursement schedules in TCA 8-21-901 relative to the amount sheriffs are paid for transporting for involuntary hospitalization.

- Change the name of the Department in Title 4 and elsewhere and restate its purposes in concert with the Commission's recommendations.

- Amend Title 34 to reference Advance Directives for Mental Health Treatment Preferences.

Recommendations directed to the Administration

- Promote access to community-based mental health community services as the most dignified, humane and responsible approach to episodes of mental illness.
- Plan for an increased portion of mental retardation resources for people on waiting lists.
- Prioritize coordination of services for children, youth and their families. Promote planning and policy development for all Tennessee children.
- Examine the need for surrogate decision-makers for other vulnerable people. Develop a comprehensive law about surrogate decision-making.
- Publish practical directories of Tennessee laws collated by subject matter and audiences.
- Minimize duplicative monitoring of service providers funded by multiple state agencies.

Recommendations directed to the Department

- Provide and arrange for training for law enforcement in mental health crisis management and transportation for individuals with mental illness.
- Focus on assisting people in transition from age-based services to the next age-appropriate services.
- Establish inter-divisional agreements to assure that people who have co-occurring mental health issues and developmental disabilities are served appropriately.
- Promote typical housing options for consumers.
- Promulgate rules in certain areas to support Title 33.
  - administration of psychotropic medications for children
  - confidentiality
  - conflict resolution
  - functions of Treatment Review Committees
  - reimbursement
  - 24-72 hour observation, assessment, treatment services.
  - civil penalties for Licensure violations
  - surrogate decision-making

Many other changes have been made throughout Title 33 which are not noted in this summary. Wherever possible, the subject of the law is called the person. The technical term “minor” has been replaced with “child” and its plural, “children”. The recommendations assume adoption of the recommendation to expand the law to cover people with developmental disabilities. That term is used consistently throughout the recommendations unless provisions are directed to persons with mental retardation only.

In addition, the language used in the recommendations avoids jargon and identifying services by name and, rather, describes functions using commonly understood terms. The purpose is to permit the law to remain current even though service technologies will change over time.

REPORT TO THE GOVERNOR

Title 33 Revision Commission

The Title 33 Revision Commission has completed its responsibility to review Title 33 and to make recommendations for revision which support the availability of and access to services, protection of rights of individuals, and which communicate the law in contemporary terms. The Commission met monthly from November 1998 through January 2000.

The goals were for the Code to

reflect the philosophy of the state to provide services in the least restrictive environment and most typical settings consistent with the needs and choices of the persons served.

promote equitable availability of quality services and efficiency in service delivery, and assure appropriate due process safeguards for consumers.

assure fiscal and programmatic accountability to consumers and the public with public involvement and oversight.

In its review the Commission considered other laws affecting people with mental illness, serious emotional disturbance and developmental disabilities. It used as a foundation the established mission, vision, values and principles guiding the mental health and developmental disabilities service systems.

The Commission accomplished its work through organization of Title 33 into study areas. For each of those areas, recommendations were made in lay terms by study committees which were comprised of over one hundred twenty people. Recommendations were either consented to or organized into structured proposals in issue areas for action by the Commission.

The recommendations are in two forms. Recommendations for legislative changes are embodied in a comprehensive reconstruction of Title 33. Recommendations which were important to the Commission but outside the scope of Title 33 or not legal issues are reported as Narrative Recommendations.

The highlights of the recommendations are summarized below. The complete set of recommendations are included with this report.

Recommendations for Legislative Changes

System-wide

Codify a philosophy that promotes community-based services to support people with mental illness, serious emotional disturbance and developmental disabilities in flexible, most appropriate, typical settings that enhance each person's dignity and ability to thrive; accountability to the public; and clear responsibilities of the Department and of service providers to accomplish these goals.

The inception of Title 33 was during the period when institutional services were the most desirable, available, and fundable services. Service technology and service systems have advanced far beyond that limited range of options. While some still refer to "deinstitutionalization" and fault the rapid discharge of individuals from psychiatric hospitals and developmental centers, community-based alternatives to institutionalization for people with mental illness and developmental disabilities are the most normal, responsible and civilized approaches to services and supports which are conducive to human development and happiness. Institutional services, whether hospitals, developmental centers or other "long-term" residential facilities, are insufficient to meet the human needs for individualized responses to personal needs and desires.

Without any hesitation the Commission adopted recommendations to codify support for a broad array of community-based alternative supports and services intended to maximize each individual's potential to be a respected contributor to society. The Department has led the development of responsive community services for years. The Department developed the "Community Initiative" in the early 1980s and the comprehensive "Master Plan for Mental Health Services" in the mid-1990s. Mental Retardation services began systematic discharge of people from state developmental centers to community day programs and group homes in the mid-1970s and systematically arranged services for many more people in the early 1980s. Two federal court actions currently drive much of the development of individualized community-based services and supports for people who have been served in state developmental centers and people who would have been served there if their parents had not chosen to support them in their own homes.

Promotion of community services for people in settings that are most appropriate, least restrictive and most typical is a tested approach which has been developed to the extent that resources have allowed. It is a natural extension of that development to recommend codification of community-based services sufficient to meet the individualized needs of consumers.

Citizen-based planning to advise the Department about policy and service system development, maintenance and improvement of the service systems and development of the Department's budget requests.

A hallmark of the mental health and mental retardation systems has been citizen-based planning. It has permitted consumers, families, advocates, providers, state and local agencies and others to participate in a meaningful way as advisors: identifying priority populations, service needs, a responsive array of services, comprehensive policies, and recommending distribution of resources. The mental health planning process was prompted by program mandates and financial support from the National Institute of Mental Health. The approach requires a majority of consumers and family members in the planning process.

The method has been so successful that the recommendation is to replicate the structure and approach for developmental disabilities services as well. The planning processes are to include focus on the special issues of children, the elderly and other special populations.

Representatives of the regional planning councils will become members of the statewide planning and policy council. Recommended terms of office of members are typical for advisory boards of this type. The statewide council will replace the current Board of Trustees. The limited concept of the Department's Board of Trustees no longer meets the need for responsive citizen-based planning.

The product of the regional and statewide planning and policy councils will be a three-year plan, updated annually, stating the needs for services and supports of all people with mental illness, serious emotional disturbance, and developmental disabilities including special needs of groups such as children, elderly and people with co-occurring disorders.

Require the Department to set basic quality standards for all services to people with mental illness, serious emotional disturbance and developmental disabilities.

Many monitoring processes occur, but few of them focus on the quality of services delivered. The Commission heard the concerns of consumers, families and providers about variability in the quality of services statewide and that private for-profit providers were no more accountable, and were perhaps less accountable, to the consumers than not-for-profit providers.

As the service systems continue to develop and mature, constituents are increasingly concerned that there are a large number of providers for whom there is no benchmark for adequacy of their services. For that reason alone, the Commission recommended that the Department develop uniform standards applicable to all similar services and facilities.

In addition, the Commission recommended that the Department be authorized to set higher performance standards for agencies with which it contracts.

Establish a priority for children and their families in the law. Recognize the special status of children with serious emotional disturbance and developmental disabilities. (A narrative recommendation about planning, coordination and service development for all children augments this legislative recommendation.)

The Commission endorsed recommendations to define serious emotional disturbance and to give priority to services and supports for children who have serious emotional disturbance. In conjunction with the adoption of the definition of serious emotional disturbance, the Commission recommended a Chapter devoted to special provisions for children.

The Commission wants to emphasize the importance of children and their families as significant constituent groups, to create a foundation for the development of additional laws about children, and to permit those whose interest is primarily in children to find the provisions and references to other laws applicable to children in Title 33. The Chapter includes requirements for implementation of service principles and participation in processes directed toward achieving interagency agreements. It commits to meaningful inclusion of parents, legal guardians and custodial agents in service planning, development and monitoring.

The recommendations for Title 33 represent a major step forward in promoting a comprehensive agenda for children of this state, something the Commission considers to be a high priority.

Extend Licensure requirements to services to people with mental illness, serious emotional disturbance, and developmental disabilities in addition to Licensure of facilities.

As the service systems have evolved, increasing numbers of services are being provided in locations other than facilities, often in one's home or other places the person frequents. Examples are case management services and independent case coordination. The expectation for case management is that case managers are to go wherever necessary to sustain a relationship with the person. Generally this is outside a facility. The office for case managers, for example, exists only to provide a base of operations; the service is not provided directly at that site.

The Commission determined that, in conjunction with setting standards for all types of services, it is necessary to have a mechanism for monitoring and credentialing a variety of services to assure their quality. Thus the Commission recommended the extension of the provisions for licensure to services as a way to assure their quality and protection of service recipients.

Require all licensees to have conflict resolution procedures that correspond to promote cost effective, quick resolution of consumers' service delivery issues.

Consumers and their families want their issues to be heard and resolved quickly. Statewide, citizens testified that providers turn a deaf ear to their concerns. The Commission recommended that each service provider be required to develop and communicate procedures to resolve conflicts informally, if possible, and definitively. It is recommended that providers be required to establish procedures, including an appeal process, to resolve issues of confidentiality, health and safety in program conditions and decisions to terminate services. Consumers and their families deserve responses to their concerns and the Commission believes these recommendations are a cost effective, efficient way to respond to that request.

Develop interagency agreements to address issues in which multiple agencies have involvement in the provision of services to people with mental illness, serious emotional disturbance and developmental disabilities.

The authority of the Commissioner to enter into Interagency Agreements exists in Title 33 but it was believed that explicitly codifying the scope, content and requirements for participation in interagency agreements increased the likelihood that interagency agreements would be developed and implemented on behalf of children. The Commission adopted the position that provisions for interagency agreements would be useful for all people covered by Title 33 and so the provisions are in the first chapter.

Adopt civil penalties as one remedy for violations of Licensure rules.

The current Licensure rules are clear and tested. However, there were no provisions for penalties other than suspending or revoking licenses for violations. The recommendations include provisions for civil penalties to prompt quick resolution to violations of Licensure rules.

Recognize that the provisions of the recommendations do not create entitlements to services.

The principles and values recommended for inclusion in Chapter 1 are visionary and broad. However, the recommendations include an explicit provision that the requirements of Title 33 do not create entitlements to services.

Mental Health Services

New authority for services for people with mental illness who are experiencing severe impairment, a service which permits observation, assessment and treatment under certain conditions for twenty-four (24) to seventy-two (72) hours without court proceedings when psychiatric certification is given.

Consumers and families have experienced terrible consequences of services that are too little, too late. Even those who are already enrolled in the public system have been unable to access services early, that is, when one recognizes the need for immediate adjustment of medication or other treatment. The provisions for new services for people with mental illness who are experiencing severe impairment is an attempt to help rectify that situation.

The best of all possible alternatives is for a person to be able to see a therapist as an outpatient when necessary and early, to discuss the current conditions, and to adjust and monitor medication closely. However, in certain cases of deterioration, the current law does not provide an effective authority to provide treatment in a timely way.

The response endorsed by the Commission is to permit people to come or be brought to psychiatric units authorized by the Department to observe, assess, and treat people with mental illness who are experiencing severe impairment. Severe impairment is the condition when a person is in danger of serious physical harm resulting from the person's failure to provide for his or her essential human needs of health or safety or is deteriorating in routine functioning, evidenced by loss of cognitive or volitional control over one's actions. The provisions permit a person to be admitted for twenty-four (24) hours if treatment is started within six (6) hours and certified by one physician, and for up to seventy-two (72) hours if a second physician certifies that the person needs to be admitted for observation and treatment.

One rationale for these provisions is to permit a functional, accessible response to serious conditions with certain medical safeguards in place. Another reason is that, reportedly, without the safeguards of two certificates, detention of this type is already occurring. It is not clear whether providers know or are unaware that people cannot be detained without meeting legal criteria. Nonetheless, it is believed that the ability to detain a person for up to 72 hours will permit accurate assessment and timely treatment of persons who present at these types of psychiatric units with mental health needs.

Requirements for mandatory prescreening should be extended to all hospitalizations for people whose services are publicly funded.

Mandatory prescreening was initially enacted to avoid unnecessary admissions to state mental health hospitals. The approach was very effective, although implementation statewide was not well received. Subsequently, the mandatory prescreening requirements have been incorporated into the processes of the managed care organizations, and it is considered to be a useful way to divert persons from hospitalization when other appropriate alternatives can be provided.

The Commission recommended extension of mandatory prescreening requirements to all hospital admissions for people whose services are publicly funded. This is a

way to increase diversion to other services that are perhaps unknown to the person who is certifying the need for hospitalization, and as a way to promote use of less restrictive, responsive services when appropriate.

Extend requirements for treatment review committees to all treatment resources that serve people who are involuntarily committed to services to assist in decision-making about treatment, confidentiality and other significant matters.

Consumers and professionals have been concerned about the protection of the rights of people who are hospitalized involuntarily. Frequently, decisions need to be made about a person's treatment and about disclosure of information, but the person lacks capacity to provide consent. The Commission considered the alternatives, among them establishing conservators for people who are unable to make such decisions, and decided to recommend expansion of the requirements of treatment review committees for such purposes to all treatment resources and hospitals, both public and private.

The composition of the treatment review committee includes qualified mental health professionals, physicians, clinical chaplains and others, none of whom can be members of the person's treatment team. The purpose of the treatment review committee is to provide surrogate decision-making. The Commission adopted the position that it is important for the treatment review committee to be informed and objective as it makes its decisions.

People aged sixteen and over are to be encouraged to participate in the treatment review committee meetings, in keeping with the overall philosophy of the state to promote self determination, and to assure consumer participation in the development of their services. Every effort is to be made to get the participation of parents, legal guardians and custodians because they are integral to the development of meaningful services leading to recovery.

Permit transportation of people for involuntary hospitalization by alternative transportation agents working in conjunction with, but other than, sheriffs if the mandatory prescreening agent or certifying physician clears the person for medical and security concerns. This may include families.

The State has a reliable statewide system of transportation for involuntary hospitalization which relies primarily on county sheriffs taking people who are certified as needing hospitalization from the initial, evaluating hospital (emergency room) to a psychiatric hospital or treatment resource. There are concerns, however. People are shackled or restrained when restraint may not be needed. Transportation against one's will is a traumatic experience, magnified by the seriousness of the process of involuntary hospitalization generally. Transportation by law enforcement sustains and reinforces the stigma of mental illness. Also, responsibility for transporting is a burden on law enforcement. For these reasons it is incumbent on the State to promote transportation alternatives.

The Commission recommended that, in collaboration with sheriffs and county executives, alternative transportation agents be available and used when the Mandatory Prescreening Agent or certifying physician determines that the medical and security needs of the person to be hospitalized can be accommodated with reliable services other than the sheriff.

The advantages to the recommendation are that the State does not forgo the benefits of a reliable system. At the same time, though, it authorizes alternatives for people under certain conditions, specifically those that assure the medical and security needs of the person are met.

New provisions for mental health consumers to make declarations for mental health treatment to be implemented during periods when they are not otherwise able to state their preferences.

Many consumers manage their recovery effectively but, unless one has a durable power of attorney for health services, consumers must relinquish direction over their services when their mental condition is compromised. Consumers have reached a level of personal expertise and responsibility for managing their treatment that demands that the State recognize their ability and willingness to assume responsibility for future care and treatment under conditions when decision-making is compromised. Provision for these circumstances is referred to as Declarations for Mental Health Treatment and commonly referred to as Advance Directives.

There are risks associated with the provisions for Declarations for Mental Health Treatment. However, the Commission endorsed codification of Declarations that specify the requirements for decisions to be made, including whether one wants hospitalization to be authorized by another person, use of certain types of medications and behavior therapies, and at what point the directives can be activated.

Provisions for medical durable power of attorney are in Title 34. Consumers advocated, however, for provisions for Declarations for Mental Health Treatment to be in Title 33 because it is the foremost reference for people with mental illness who want to know their rights. Provisions are included in Title 33 for that reason and because Declarations for Mental Health Treatment are related to provision of mental health services, which are authorized and regulated under Title 33.

Developmental Disabilities Services

Expand coverage of Title 33 to people with developmental disabilities one year after enactment of the legislation.

People in Tennessee are born with or develop developmental disabilities which, without individualized services and supports, relegate them to limited behavioral functioning, limited communication, limited mobility, and vastly under-developed potential. Many of the functional needs of people with developmental disabilities are very much like those of people with mental retardation, who have been covered by Title 33 since its inception in 1965.

Under the current system, services for people with developmental disabilities are scarce, fragmented, and generally of insufficient scope and quality. Existing services are expensive, or if available through the public system, limited in access to only the most seriously disabled persons. Families must become case managers, develop services, and advocate in addition to the normal responsibilities of parenting. Currently there is no single state agency responsible for assessing service needs nor resources to people with developmental disabilities nor for systematic development of services for them.

The recommendation of the Commission is to extend the protections and opportunities of Title 33 and the authority of the Department to people with developmental disabilities. Developmental disabilities are not entirely new to Title 33. One part of the law, the Family Support Program, is specifically targeted to people with developmental disabilities and their families. Other references to developmental disabilities appear in the code in recent amendments to it.

Advocates argued effectively that the similarities in functional limitations blur the distinctions between people with mental retardation and those with other developmental disabilities. Significant diagnostic advances are eroding old classifications of characteristics, permitting the focus to be on persons' different abilities, rather than limitations.

The conclusion was that, so long as no one with mental retardation will be denied the protections of Title 33, then all people with developmental disabilities, which includes some people with mental retardation, should have the protections and opportunities of Title 33 extended to them. The Commission committed to a definition of developmental disabilities that would assure continuation of service eligibility and protections for all people currently covered under the law, noting particularly people with "mild" mental retardation who might have been eliminated by the conventional federal criteria for developmental disabilities, as well as adding other people with developmental disabilities.

A major concern was that expansion of the law to cover all people with developmental disabilities would diminish the already scarce services available to people with mental retardation, and that the only effect of the recommendation would be to increase the numbers of people on waiting lists.

The Commission determined that it was reasonable and appropriate to expand the protections and opportunities of Title 33 to all people with developmental disabilities

so long as no people with any level of mental retardation are eliminated from services.

Second, the Commission decided that transition to developmental disabilities eligibility should be phased. The Commission recommends delay of implementation of developmental disabilities eligibility for one year following the enactment of legislative recommendations to permit the Department to identify the number of people who will be eligible for services and protections, their needs, existing resources and potential new resources.

Provisions for independent review, if necessary, of admissions to publicly funded private developmental centers and other residential services for people with developmental disabilities.

The Commission was interested in establishing independent review of all out-of-home residential placements of persons with mental retardation. The concern was that persons are being placed in residential settings without due process to protect the persons' liberty interests. After considering the range of circumstances, the Commission determined that the existing requirements for admissions review processes should be limited to the State's developmental centers. The Commission recommended in addition that the Department have the authority to impose independent review of placements in residential services if conditions warrant oversight. Imposition of independent reviews would be contingent upon a determination that there has been deprivation of liberty without consent; abuse, neglect or exploitation; placement which is inappropriate to meet needs of consumers; violation of a fiduciary relationship; or any other violation of rights.

Authorize mandatory community-based services for people who are charged with a crime, incompetent to stand trial and not committable to an institution.

Without a plan, the courts are reluctant to release persons with mental retardation or mental illness who are charged with crimes, incompetent to stand trial and not committable but who are at risk of becoming commitable; or persons with mental retardation who are insanity aquittees and not committable but who require training and treatment; or persons with mental retardation who have been committed in connection with a capital offense or found not guilty by reason of insanity on a capital offense and who no longer meet the standards under which they were committed. As a result, people are being detained in jails, in state hospitals and in other locations without legal justification. The number of cases who meet these conditions is small, but the consequences of the people obtaining services are significant. It is necessary to provide the courts with a plan for services and training to help these individuals gain and maintain competency to stand trial or to prevent deterioration to the point where the person would be committable.

The Commission recommended that, subject to the limitations of an annual line item appropriation for this purpose, mandatory community services be developed for

offenders with mental retardation or mental illness whose release is contingent upon such a plan. One concern has been that provisions of this nature could erode the limited resources available for the numerous other people on waiting lists for services. The Commission determined that limiting the scope of the provisions to annual appropriations for this purpose would be a safeguard against that and also that the liberty rights of the persons affected by the provisions were paramount.

Permit decisions about medical and dental services to be made by surrogates for adults with developmental disabilities due to mental impairment.

Family members and other close associates of adults who have mental retardation are frequently asked to authorize services for that person, but because the person is an adult, the family member or associate has no legal right to do so. Some professionals rely on the other adults' decisions regardless. Others deny services because of liability concerns, no matter how essential the services are to the person's health.

Currently, one may legally substitute the judgment of one adult with another's only by establishing a conservatorship or durable power of attorney for health care. The legal process to establish a conservator is costly and complex. It is a significant step that limits one's autonomy. It significantly alters the relationship of two people, making one subordinate to the other. There are very few people willing to be conservators and there is no effective statewide public guardian or conservator program.

The Commission recommends provisions to permit individuals who meet certain conditions to be surrogate decision-makers for routine medical and dental decisions for adults who have mental retardation. There are shortcomings to the proposal, but it attempts to address the realities of many families of adults with developmental disabilities due to mental impairment who lack capacity to make informed decisions about routine medical and dental care. It provides protections for treating professionals. It reduces liability of providers who need permission to perform medical or dental procedures and, so, increases the likelihood that some people will get treatment, which might have been denied them without a surrogate.

Narrative Recommendations

Recommendations which Span Laws in Addition to Title 33

Include laws about Alcohol and Substance Abuse in Title 33. Include representation from the Title 33 Revision Commission in the Task Force which is to review Alcohol & Substance Abuse Services policy and administration.

The Commission strongly recommends that the laws, administration and functions of alcohol and substance abuse services be in Title 33 and under the auspice of the Department of Mental Health and Mental Retardation. The recommendation is based on programmatic, service and legal issues which affect provision of alcohol and substance abuse (A&SA) services.

Access to mental health services is determined primarily on the basis of a diagnosis of mental illness. The definition of mental illness in Title 33, which includes alcohol and drug dependence, is based on prevailing diagnostic tools. The original foundation for alcohol and substance abuse services was in Title 33 and key functions of the alcohol and substance abuse system remain under this authority.

The Commission recommends that the Task Force, which will review policy and administration of Alcohol and Substance Abuse Services, include representation from the Title 33 Revision Commission.

Examine the need for surrogate decision-makers for other vulnerable people. Develop a comprehensive law about surrogate decision-making.

There are many vulnerable people who do not have a developmental disability due to mental impairment for whom a surrogate might be appropriate.

Establish uniform confidentiality requirements and disclosure provisions for all human service professionals.

Medical, mental health and social service professionals are required to keep client information confidential. Because the standards for confidentiality vary, it is difficult to exchange straightforward information when a client is served by multiple agencies. The Commission recommends that confidentiality requirements of professionals governed by the Board of Healing Arts be made compatible.

Exclude mental health residential treatment facilities from the Certificate of Need law.

Certificates of Need are an important regulatory control over the development or distribution of services which are in great supply. There are very few mental health residential treatment facilities available and they are not supported by Medicaid. There is no compelling reason to require Certificates of Need.

Review and update or remove reimbursement schedules in TCA 8-21-901 relative to the amount sheriffs are paid for transporting people for involuntary hospitalization.

Greater than 80% of all public hospitalizations are emergency involuntary admissions with transportation by local sheriffs' departments. Reimbursement (20

cents per mile/one way, a rate tied to transportation of prisoners) is insufficient for the time, effort and distances traveled to fulfill this obligation.

Change the name of the Department in Title 4 and restate its purposes in concert with the Commission's recommendations.

Amend Title 34 to reference Declarations for Mental Health Treatment.

Recommendations Directed to the Administration

Re-align access to mental health community support services.

Inability to access mental health services early, when the need first becomes apparent, has resulted in over-reliance on hospitalization. The Commission recommends that the Administration develop new strategies to re-align the delivery of services so that people have access to needed services early, when intervention is most dignified and least costly; are able to be admitted to hospitals either voluntarily or involuntarily, as appropriate, when hospitalization is necessary; and to the extent possible, in accordance with the consumers' treatment preferences.

The Department must have authority to set policy for the Partners Program. Policy development requires ready access to management information, which is exclusively in the domain of the TennCare Bureau.

Plan for increased portion of mental retardation resources for people on waiting lists.

Family members who would have met the admission criteria for developmental center services, but who remained in their homes or were supported in the community, do not have the same access to publicly funded services as class members of the two lawsuits.

The Commission recommends an analysis of the needs of constituents with developmental disabilities due to mental impairment, to plan for expansion of services for those who are on waiting lists and for those who will become eligible for services with the adoption of the developmental disabilities definition in Title 33.

Prioritize coordination of services for children, youth and their families. Promote planning and policy development for all Tennessee children.

Systemic, comprehensive planning and service development for children require leadership from a broad based organization focused primarily on children.

The Commission recommends a comprehensive review of all laws and policies pertaining to children, possibly excluding juvenile delinquency laws which have just been reviewed. The purposes would be to

- develop proactive structures to support intact families; overcome discrepancies in requirements and service gaps;
- create a forum for comprehensive planning for children; and
- to place a high priority on children in this state and communicate a strong message about them.

Publish practical directories of Tennessee laws collated by subject matter.

The Commission recommends publication of unofficial compilations of laws for specialized audiences, such as the juvenile court judges, and also that relevant law be cross-referenced and updated routinely by the Codes Commission.

In conjunction, it is recommended that a manual be developed explaining people's rights which is understandable by parents and other lay readers.

Minimize duplicative monitoring of service providers funded by multiple state agencies.

The Commission strongly recommends that duplication in monitoring by state agencies and their contractor agents be kept to a minimum as a means to reduce administrative costs and disruption of services.

Recommendations Directed to the Department

Require the Department to provide and arrange for training for law enforcement in mental health crisis management and transportation for individuals with mental illness.

Equipping law enforcement with mental health crisis management techniques is essential for the well-being of both the consumers and law enforcement. The Commission strongly recommends that crisis management training be a high priority for the Department.

Focus on assisting people in transition from age-based services to the next age-appropriate services.

The Commission recommends that the Department plan and develop interagency agreements with other agencies to coordinate the transition of children and youth who have either serious emotional disturbance or developmental disabilities to the next age-appropriate services.

Establish inter-divisional agreements to assure that people who have co-occurring mental health and developmental disabilities are served appropriately.

Promote typical housing options for consumers.

Inadequate housing was one of the most frequently mentioned concerns of adults expressed during public hearings. The legislative recommendations include authority for the Department to establish a revolving loan program for housing. That authority alone will not assure that housing options increase.

The Commission recommends renewed attention to development of housing options and protection for consumers under The Uniform Residential Landlord and Tenant Act.

Promulgate rules to support Title 33.

Areas for rule-making are administration of psychotropic medications for children; confidentiality; conflict resolution; functions of Treatment Review Committees; reimbursement; 24-72 hour observation, assessment, treatment services; civil penalties for Licensure violations; and surrogate decision-making.

SUMMARY OF TITLE 33 BY CHAPTERS

Chapter 1 contains general provisions that create the foundation for all of Title 33, including definitions of terms used throughout the law. New to the chapter are provisions that commit the State to system planning, policy development, quality standards, system monitoring and evaluation, public information and advocacy for people with mental illness, serious emotional disturbance and developmental disabilities. Extension of the Department's authority for people with developmental disabilities is significant. Protections of the law, identification of a cabinet level state agency responsible for needs assessment, service development for and accountability to this group, plus opportunities for policy development are important aspects of this recommendation. The chapter articulates values upon which the law is predicated: individual rights, promotion of self-determination, respect, optimal health and safety, inclusion of consumers in community life and typical community settings. It commits the Department to principles in discharging its responsibilities for flexible but stable service systems; continuous improvement; early identification of needs, prevention and early intervention; timely response to needs; treating people with dignity and respect; accountability for use of public funds; ongoing development of the workforce; and cultural competence of service providers.

The chapter specifies the powers and duties of the Department and the Commissioner. Most of those are unchanged from Title 33 extant. New are provisions to initiate interagency agreements on matters where several state agencies have some responsibility for service delivery or policy which affects people covered by Title 33. Also new are provisions for a Statewide Planning and Policy Council to advise the Department about the development of the service systems, policy development, budget requests and evaluation of services and supports. The Council is to be composed of a majority of consumers and family members plus advocates, providers, professionals and representatives of children and the elderly.

Chapter 2 contains requirements for the Department to plan, coordinate, administer, monitor and evaluate an array of community-based services and supports for people covered by Title 33. Functions of the Department are to be carried out in collaboration with consumers, families and others affected by the State's policies. The Department's responsibilities and purposes are defined. Among them are to assure access to individualized services and supports to meet people's needs; accountability through statewide and systemwide quality standards; priority setting; coordination of services and supports among other state agencies and other public and private service providers; conflict resolution procedures and extensive involvement of consumers, family members and advocates. The chapter specifies core values of the service systems as being person-centered and family-focused, involving the family in determining how services will be provided and providing alternatives; individualized, comprehensive and age-appropriate plans for services which are provided in the least

restrictive settings by culturally sensitive providers; respectful, safe and healthful services which are continuously improved based on research and best practices.

The chapter contains requirements for the Department to develop and continuously update a three-year plan for all mental health and developmental disabilities services and supports, both publicly and privately funded. It requires that the annual budget request rely on the parts of the plan that will be implemented with public funds. To accomplish this, the chapter requires the Department to have regional citizen-based planning councils that mirror the statewide council relative to membership. The regional councils are to advise the Department and the statewide Council on the three-year plan, provide information and advise about policy, development of services, and formulation of budget requests.

The chapter contains provisions authorizing the Department to set quality standards for all providers of services to people with mental illness, serious emotional disturbance and developmental disabilities, whether or not the Department licenses them. The Department is authorized to set higher standards for agencies with which it contracts. Provisions for licensure are extended to services, that is, any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance or developmental disabilities.

The chapter contains new provisions requiring the Department to develop an array of transportation options and to promote development of interagency agreements among other state agencies, local government, public and private transportation providers, and consumers and their families to assure availability of generic and specialized transportation services for people covered by Title 33.

Provisions for conflict resolution are new to this chapter. They require the Department to promulgate rules for conflict resolution procedures and for all service agencies to have procedures that comply with the rules. Conflict resolution procedures are to include at least an informal meeting of the parties and, if the issue is not resolved, to initiate an appeal process or mediation meeting within fourteen days. The purpose is to assure quick resolution and minimum disruption of services.

Provisions for mental health center cooperation, costs in state facilities, facility Boards of Trustees, and conflict of interest are fundamentally unchanged. Provisions for criminal background checks have been extended to employees who have direct contact with persons covered by the law to all service providers.

Chapter 3 contains provisions for rights of all people. Fundamentally the law states that no person can be denied liberty rights only because one has a mental illness, serious emotional disturbance or developmental disabilities, and that all people are afforded the same rights as other people of the same age, except to the extent that a person's rights have been curtailed in accordance with the law. Information is confidential except to the extent it is necessary to implement the law, for continuity of services, as a court orders or as is needed by a custodial agent.

Information about any person is to be kept confidential unless disclosure, either with or without the person's consent, is permissible under this law or the criminal code, Title 39. Persons who are 16 years and older (or their conservator, attorney in fact under durable power of attorney) may consent to disclosure of information.

Information must be made available to the federally mandated protection and advocacy agency, but the agency may not re-disclose the information without the consent of the person. There are new provisions to assure that records about adjudication of incompetence or restoration of competence must be limited only to the findings. Special provisions for disclosure of information in cases where a child has been physically or sexually abused require the child's qualified mental health professional to permit the release of information if it is not harmful to the child. Children 16 years or older must be told what records are maintained by a provider and how to access them. Information must be made available to the person who is 16 years or older unless it is determined that giving access to the record will pose a substantial risk of serious harm to the person.

The chapter contains provisions to permit a person to append his record if s/he challenges information contained in it and the provider is unwilling to amend the record. Appended information must always accompany the official record.

An exception to confidentiality is a requirement for professionals with evidentiary privileges to testify for commitment proceedings and for proceedings to establish conservatorship.

The chapter contains provisions for use of restraint and isolation. Restraint and isolation are never to be used for discipline or for convenience of or retaliation by staff. For people with mental illness or serious emotional disturbance, isolation and restraint can only be used in emergency circumstances with safeguards for personal liberties. For people with developmental disabilities, isolation can be used only as part of an approved plan and can never be used in emergencies; restraint can be used only when the conditions for its use are spelled out in an approved plan or in emergencies. Use of restraint and isolation are to be reported to the statewide planning and policy council annually.

The chapter contains special liability rules for counseling centers that are unchanged. Provisions for "duty to warn" are extended to developmental disabilities service providers. That is, if an individual threatens to harm someone and s/he has the apparent ability to carry out the threat, the professional to whom the threat was told must warn the person who is the target of the threat.

Provisions of the chapter absolve professionals from liability under any cause of action when s/he declines to perform some action s/he might be directed to complete which is not lawful or when one has relinquished a person to another agent in the (mental health care) system.

New to the chapter are conditions for determining that a person “lacks capacity” to make informed decisions about routine medical, dental, mental health or developmental disabilities services, admission to a hospital or treatment resource, mental health treatment, and release or acquisition of information. Also new are provisions for surrogate decision-making for routine medical and dental decisions for adults with mental retardation.

Provisions for transfer of residential service recipients and of transfers from the Department of Correction are fundamentally unchanged. Provisions for judicial procedures for hospitalization, commitment to residential treatment and for judicial review of transfers have been retained from the current code, as have the provisions for violations of consumers’ rights.

Chapter 4 contains provisions for rights of people in residential services. The provisions of current Title 33 have been kept intact for the most part, with these changes: Medical examinations are not required immediately after entry into residential services because other requirements for timely examinations are more appropriate. Chief officers are no longer required to inform people about the procedures to obtain guardians or conservators at the time of entry to a residential service because it was thought that there were other, more appropriate times to inform people about these provisions.

Otherwise, the provisions for communications, visitors, treatment and habilitation services remain fundamentally the same in this chapter.

Chapter 5 focuses on services for people with mental retardation and, with these recommendations, people with developmental disabilities. The chapter permits people with developmental disabilities to become eligible for services one year after enactment of the legislation. Functional criteria for assessment of people with mental retardation are enumerated and the expectation is that those criteria would be required immediately upon passage of the legislation. People with developmental disabilities solely on the basis of having a mental illness or serious emotional disturbance are excluded from services that are intended primarily for people with developmental disabilities.

The chapter contains provisions for accessing services through designated entities who must inform the person about all options for services and supports, provide periodic updates when services are not immediately available, and some estimate of when relevant services will become available to the person and the family. Services at developmental centers are permitted to people when no other suitable provider can meet the needs of a person with developmental disabilities under provisions of this chapter.

The provisions of the Family Support Program are unchanged except that repetitious definitions have been removed. The Part relies on definitions in Chapter 1.

Requirements for an extensive admissions review process are retained for the state operated developmental centers. However, because of concerns for possible abridgment of personal rights, the chapter contains new provisions to permit the Department to impose requirements for independent review of placement in residential services under certain conditions.

Commitment provisions for forensic services for persons with mental retardation were unchanged. A new part for mandatory community-based services has been added for people with mental retardation who are charged with a crime, incompetent to stand trial and not committable to an institution. It is limited by a requirement for a line item appropriation in the Department's budget.

Chapter 6 focuses on services for adults with mental illness and children with serious emotional disturbance. The chapter establishes adults with severe disabling mental illness as a priority population. It requires the Department to set the array of services and supports in its plan and maintain a system to assure the more appropriate and effective services for publicly funded service recipients admitted to or discharged from hospitals and treatment resources. A new section requires mandatory prescreening for hospitalization in either a public or private facility for publicly funded service recipients and further designates the mandatory prescreening agent responsibility to include assessment of alternative service access and availability should certification for hospitalization not occur.

All inpatient providers of mental health services are now required to have treatment review committees to make decisions for service recipients who are admitted to inpatient facilities and lack capacity to make decisions for themselves about medication, release of information to other mental health professionals or case management agencies, obtaining information from other treatment agencies, or release of information to a family member. However, such a committee cannot override a decision by a parent, legal custodian, or legal guardian of a service recipient who is less than 16 years old. (Provisions for determining if one "lacks capacity" are in Chapter 3.)

Chapter 6 also specifies the process for admission into and discharge from inpatient services. A new provision specifically allows for three new categories of individuals to apply for voluntary admission to inpatient treatment: a conservator whom the appointing court has expressly granted authority to apply for the person's admission, a qualified mental health professional acting on the basis of the terms of the person's declaration for mental health treatment, and a person's attorney in fact under a durable power of attorney for mental health care that expressly authorizes hospitalization. For those voluntarily admitted, release may be requested by individuals 16 years or older, the service recipient's conservator, the attorney in fact under a durable power of attorney for mental health care, or the parent, legal custodian, or legal guardian of a service recipient who is a child.

A new service for people with mental illness who are experiencing severe impairment is established. This service permits observation, assessment and treatment under certain

conditions for twenty-four to seventy-two hours when psychiatric certification is given. Such services are provided only in locations approved and monitored by the Department. Detention beyond the seventy-two hours is permissible only in compliance with voluntary or emergency involuntary treatment provisions and cannot be used in lieu of services that can be performed on an outpatient basis.

The standards for involuntary hospitalization have not been changed. However, revisions clarify the application for both adults with mental illness and children with serious emotional disturbance. Professionals providing the outpatient certification of need for emergency hospitalization must also now address the need for physical restraint or vehicle security for transportation to the inpatient resource. Individuals may be admitted with a single certificate of need with the second certificate obtained within 12 hours. The non-emergency involuntary admission of a child under age sixteen is allowed only if one of the certificates is completed by a physician or psychologist with experience with children. In addition to the sheriff, transportation of persons subject to involuntary hospitalization can be provided by families, community mental health centers, ambulance services, or other transportation agents under contract with the county.

Mandatory outpatient treatment provisions are revised to ensure application to both adults with mental illness and children with serious emotional disturbance. One change is to vest the court where the hospital is located with the authority to hold recommitment hearings for persons who are returned to the hospital for noncompliance with the mandatory outpatient treatment plan. The provisions also require the consent to the plan from the service recipient's parent, legal custodian, or legal guardian if the recipient is a child. Other changes were crafted to make terminology consistent with other portions of Title 33.

The provisions in Chapter 6 for sex offenders were not changed.

A new section allows the sheriff to designate a secondary transportation agent for a county to be used to transport for involuntary hospitalization when physical restraint or vehicle security is not needed. It also clarifies that transportation is the responsibility of the county in which the person is initially detained but the county of residence may be billed for transportation costs.

A major new section has been created for a competent adult to make a declaration for mental health treatment preferences and instructions about participation in mental health treatment. The declaration is applicable for a maximum of two years and is operative upon delivery to the service provider when the recipient has been found to be incapable of making mental health treatment decisions. Admission to a mental health facility, provision of treatment or issuance of insurance cannot be predicated on execution of a declaration. The Department is required to make available standard forms for declarations and mental health service providers must routinely provide information on declarations.

Chapter 7 contains the provisions for evaluation and treatment services for individuals with mental illness who are involved with the criminal justice system. It specifies the responsibility and location (community, inpatient, secure facility) for pretrial evaluations for competency to stand trial and mental condition at the time of the offense, treatment for individuals who are committable following a pretrial evaluation, and evaluation and treatment for individuals found not guilty by reason of insanity. New to this chapter is a provision, subject to line item appropriation, for court mandated services for up to two years when the individual is charged with a felony, is incompetent to stand trial, not committable but at risk of becoming committable.

Chapter 8 is a victory for advocates of children and their families. Except for the provisions for use of electroconvulsive shock therapy, all the provisions are new. The new provisions are important. They magnify the priority of children and their families in these ways:

The chapter articulates the value of families as primary care-givers and encourages children to remain in their homes. Principles for carrying out responsibilities are specified as criteria for responsibilities of service providers and advocates. Equitable involvement of care-givers in planning and service development are essential. The Department's responsibilities include promoting collaboration among agencies and care-givers, interdepartmental planning, determining eligibility, providing basic standards, promoting effective advocacy for systems and supports for people with serious emotional disturbance.

The chapter identifies children with serious emotional disturbance and developmental disabilities as priority populations. In reality, only children with serious emotional disturbance are an active priority of the Department, evidenced by a commitment of resources and planning. Most services for children with developmental disabilities are provided by the Department of Education.

There are some provisions for the rights of children with serious emotional disturbance, distinguishing people who are 16 and older from other children, providing sixteen year old people basically the same rights as adults.
The chapter contains many safeguards for the use of electroconvulsive shock therapy with children.

Dedicating a chapter in the Code to service provision for children provides a framework for future development of issues such as administration of psychoactive medications for children and it serves as a springboard for additional planning and policy development for Tennessee children.

Chapter 9 contains the provisions for return of an individual with mental illness who has fled from another state upon demand of the executive authority of that state. Additionally, Chapter 9 contains the provisions of the "Interstate Compact" which is an agreement between member states to transfer individuals with mental illness or developmental disability from one state to another when there is reason to believe that

care in another state would be in the best interest of the individual and would not jeopardize the public safety. This is most frequently used when the individual has a family support system in Tennessee not available in the state in which he has been detained. This Compact is a nationally recognized legal basis for interstate transfers and was changed only to make language current and synchronous with terminology in Title 33. No substantive changes were made.

NARRATIVE RECOMMENDATIONS

As a part of its comprehensive review, the Title 33 Revision Commission (the Commission) considered aspects of the service systems which are related to, but not covered by Title 33. Some concerns were outside the scope of Title 33 yet integral to the functions of the service systems and protections for people covered by Title 33. Some concerns were policy matters and implementation issues. In addition to the Commission's recommendations for legislative changes, several narrative recommendations address issues the Commission considered important.

LEGAL ISSUES WHICH SPAN LAWS IN ADDITION TO TITLE 33

Include laws about Alcohol and Substance Abuse in Title 33. Include representation from the Title 33 Revision Commission in the Task Force that is to review Alcohol & Substance Abuse Services policy and administration.

The Commission strongly recommends that the laws, administration and functions of alcohol and substance abuse services be in Title 33 and under the auspice of the Department of Mental Health and Mental Retardation. The recommendation is based on programmatic, service and legal issues which affect provision of alcohol and substance abuse (A&SA) services.

Access to mental health services is determined primarily on the basis of a diagnosis of mental illness. The definition of mental illness in Title 33, which includes alcohol and drug dependence, is based on prevailing diagnostic tools. The original foundation for alcohol and substance abuse services was in Title 33 and key functions of the alcohol and substance abuse system remain under this authority.

These considerations compel this recommendation:

Laws governing all admissions for hospitalization for alcohol dependence and drug dependence treatment are in Title 33.

State laws governing confidentiality of records are important for protecting information which, if disclosed, can stigmatize a person for getting treatment for his or her condition.

There is a tremendous quantity of new knowledge about the co-occurrence of A&SA with mental illness and developmental disabilities which suggests that the service systems should be coupled.

The National Co-morbidity Survey found 52% of those with lifetime alcohol and drug abuse or dependence also had a lifetime mental disorder. People with mental

disorders are at least twice as likely to abuse alcohol and other drugs as people with no mental disorder.

Extensive co-morbidity of alcohol and drug abuse or dependence and mental disorder places demands on treatment professionals to understand the complexities of both disorders and to devise appropriate treatment and interventions for people who experience both.

Philosophical differences of alcohol and drug abuse or dependence providers and mental health providers tend to fragment treatment services unless they are organized and targeted to work cooperatively to overcome professional differences on behalf of clients.

The flow of funds to the mental health and alcohol and substance abuse systems suggests that mental health and alcohol and substance abuse should be administered under one auspice.

Funds for publicly supported mental health and substance abuse services are both a part of the TennCare Partners Program.

Inequity in the TennCare behavioral benefits may cause providers to skew assessment of substance abuse, so that enrollees can receive services under mental health benefits.

Resources from the federal block grants come from one agency, Substance Abuse and Mental Health Services Administration; the amounts are significant: $4.6M for MH and $25.9 for A&SA.

The service systems overlap. Many of the same providers serve people with both diagnoses.

Many, but not all, A&SA service providers are community mental health agencies. All community mental health centers, case management agencies, psychosocial programs and other agencies provide or arrange for alcohol and substance abuse services because of the high incidence of co-occurring disorders as described above.

Episodes of alcohol abuse or drug abuse can appear to be other types of mental illness so people are frequently brought to mental health agencies and emergency rooms for psychiatric assessments.

The Bureau of Alcohol and Substance Abuse Services was a division of DMHMR previously; its shift from the Department was not for programmatic reasons.

For these reasons, the Commission recommends that the laws about alcohol and substance abuse services be in Title 33. The Commission recommends that the Task Force, which will review policy and administration of Alcohol and Substance Abuse

Services, include representation from the Title 33 Revision Commission. The recommendations of the Commission about A&SA services emerged from a study committee comprised of a variety of constituents who are knowledgeable about the relationship of the systems, treatment issues and funding.

Examine the need for surrogate decision-makers for other vulnerable people. Develop a comprehensive law about surrogate decision-making.

There are many vulnerable people who lack capacity to make informed decisions about routine medical and dental care. There are many vulnerable people for whom a surrogate might be appropriate, such as individuals in nursing homes and other frail, elderly people. The recommendation for legislative change does not cover them. It is a very limited proposal to approach a very big issue.
Therefore, the Commission recommends a comprehensive review of the issues and, if reasonable, establishing provisions for surrogate decision-making inclusive of all circumstances and persons who could benefit.

Establish uniform confidentiality requirements and disclosure provisions for all human service professionals.

Medical, mental health and social service professionals are required to keep client information confidential. Because the standards for confidentiality vary, it is difficult to exchange straightforward information when a client is served by multiple agencies. Confidentiality requirements of professionals governed by the Board of Healing Arts need to be made compatible.

Provisions to permit disclosure under certain conditions are needed. Requirements to disclose for evidentiary purposes are at odds with confidentiality standards. The Commission's legislative recommendations address exceptions in Title 33 when disclosure can be made without a person's consent. These exceptions, however, are not inclusive of all the other laws, which require disclosure.

Exclude mental health residential treatment facilities from the Certificate of Need law.

Certificates of Need are an important regulatory control over the development or distribution of a service which is in great supply but not when there is an insufficient number of services available. There is no compelling reason to require Certificates of Need for mental health residential treatment facilities. There are very few of them available and they are not supported by Medicaid. Leadership of the Health Facilities Commission agrees with this recommendation.

Review and update or remove reimbursement schedules in TCA 8-21-901 relative to the amount sheriffs are paid for transporting people for involuntary hospitalization.

Greater than 80% of all public hospitalizations are emergency involuntary admissions, which require transportation by local sheriffs' departments. The Commission's legislative recommendations include provisions for transportation by someone other than the sheriff when medical and safety criteria are met. However, the need for transportation by the sheriff will remain for the foreseeable future. Reimbursement (20 cents per mile/one way, a rate tied to transportation of prisoners) is insufficient for the time, effort and distances traveled to fulfill this obligation.

The Commission recommends that reimbursement rates in TCA Section 8-21-901 be updated to be more realistic or that the reimbursement rates be removed from statute so that they can be updated periodically as appropriate.

Change the name of the Department in Title 4 and restate its purposes in concert with the Commission's recommendations.

Amend Title 34 to reference Advance Directives for Mental Health Treatment Preferences.

RECOMMENDATIONS DIRECTED TO THE ADMINISTRATION

Re-align access to mental health community support services.

The TennCare Partners Program has permitted many more adults with mental health problems and mental illness to receive services. However, inability to access mental health services early, when the need first becomes apparent, has resulted in over-reliance on hospitalization. People who have urgent mental health needs cannot get outpatient medical services. Their conditions deteriorate; they suffer immeasurably and unnecessarily; and families are forced to make choices that have life-long repercussions. Inaccessible outpatient services have triggered revolving admission and discharge cycles, which are unparalleled since before the development of community support services.

The Commission recommends that the Administration develop new strategies to re-align the delivery of services so that people have access to needed services early, when intervention is most dignified and least costly; are able to be admitted to hospitals either voluntarily or involuntarily, as appropriate, when hospitalization is necessary; and to the extent possible, in accordance with the consumers' treatment preferences.

The Department must have authority to set policy for the Partners Program. Policy development requires ready access to management information, which is exclusively in the domain of the TennCare Bureau.

Plan for increased resources for people with mental retardation on waiting lists.

The current federal court order and settlement have brought justifiable attention to the needs of people in developmental centers for whom community supports are being developed. The Commission commends the people responsible for the infusion of resources to the mental retardation system. The opportunities created for people who benefit from the court order and settlement are tremendous.

Stakeholders of other people with developmental disabilities due to mental impairment plea for equity. Families whose family members would have met the admission criteria for developmental center services, but who remained in their homes or supported in the community, do not have the same access to publicly funded services as class members of the two lawsuits.

The Commission recommends an analysis of the needs of constituents with developmental disabilities due to mental impairment in the community, to plan for expansion of services for those who are on waiting lists and for those who will become eligible for services with the expansion of Title 33 to developmental disabilities.

Prioritize coordination of services for children, youth and their families. Promote planning and policy development for all Tennessee children.

The Title 33 Revision Commission created an opportunity for child advocates and other stakeholders to express many concerns about the status of children; services available to them and their parents and guardians; and how services are organized and their auspice. Among other things, the Commission's study committee on children's issues was interested in defining systems of care, wrap-around services and the roles of parents in service delivery systems. The advocacy was important. It informed all listeners about hardships confronting children and their families, lack of coordination among agencies that serve children, a dirth of specialized services, and gaps in age-appropriate services for children in state custody.

Many of the concerns are beyond the scope of Title 33. Advocates and other constituents sought solutions in Title 33, in part, because of the opportunity created by the review of the law and because historically, the Department's planning process has been open, participatory and inclusive. People are heard. However, systemic, comprehensive planning and service development for children require leadership from a broad based organization focused primarily on children.

The Commission recommends a comprehensive review of all laws and policies pertaining to children, possibly excluding juvenile delinquency laws which have just been reviewed. The purpose would be to develop proactive structures to support intact families; overcome discrepancies in requirements and service gaps; create a forum for comprehensive planning for children; and to place a high priority on children in this state and communicate a strong message about them.

Publish practical directories of Tennessee laws collated by subject matter.

Despite valiant attempts to simplify them, laws are complex. They are not necessarily organized as various users want them to be. No single organization of content, structure or vocabulary can meet the needs or expectations of all users. This issue was magnified by children's advocates who advocated for all requirements of Title 33 relating to children to be restated in one chapter devoted to children. However, this is contrary to the drafting principles for structure and organization of all law.

One way to satisfy this concern is to publish unofficial compilations of the law. Some people, juvenile court judges, for example, have greater need for certain portions of the code and for the information to be in a different order than that in the code. A second solution is for the Codes Commission to routinely cross-reference laws to other relevant areas as they are enacted or amended.

Additionally, parents have expressed tremendous frustration with the lack of useable information about their rights as they attempt to access services for their children. They feel powerless without basic knowledge about their rights.

The Commission recommends publication of unofficial compilations of laws for specialized audiences, such as the juvenile court judges, and also that relevant law be cross-referenced and updated routinely by the Codes Commission.
In conjunction, it is recommended that a manual be developed explaining people's rights which is understandable by parents and other lay readers.

Minimize duplicative monitoring of service providers funded by multiple state agencies.

The Commission heard from providers statewide who have multiple funding sources about the administrative costs and disruption to services caused by duplicative monitoring by state agencies. Some agencies have multiple reviews for life safety and most have multiple reviews for program standards. Often state agencies and other standard setting organizations have similar, but not identical, program standards and have different requirements for administrative functions. Accommodations are required, which may have little to do with providing an adequate program, e.g., location of client records. Providers tell of duplicative monitoring, including life safety compliance, by the behavioral health organization, DMHMR Licensure, Bureau of Alcohol and Substance Abuse Services and for the federal Block Grant.

The Commission strongly recommends that duplication in monitoring by state agencies and their contractor agents be kept to a minimum as a means to reduce administrative costs and disruption of services.

RECOMMENDATIONS DIRECTED TO THE DEPARTMENT

Require the Department to provide and arrange for training for law enforcement in mental health crisis management and transportation for individuals with mental illness.

People in law enforcement are called on to respond to widely different circumstances; they must be prepared to resolve crises of all types effectively. Mental health cases require different responses than other types of disturbances. Special training in mental health crisis management equips officers to resolve disturbances with less violence, less intrusion, and less physical interaction. It reduces the likelihood of persons being harmed. Equipping law enforcement with mental health crisis management techniques is essential for the well-being of both the consumers and law enforcement.

The Commission strongly recommends that crisis management training be a high priority for the Department. The Tennessee Corrections Institute should require crisis management training in its core standards.

Focus on assisting people in transition from age-based services to the next age-appropriate services.

Many services have age criteria for participation. Many people have no services available when they no longer qualify because of age. Others do not make the transition to the next age-related service. Examples in the developmental disabilities area are children who are eligible for services from birth to three years for whom there are no services again until age five; youngsters who may be in public education through age 22 but who are not encouraged to remain in education and for whom there are few relevant programs in education or in the private sector until age 22. Examples in the mental health system are youth, particularly those in state custody, who have been receiving services but who do not get assistance with entering adult services when they are released from state custody.

The Commission recommends that the Department plan and develop interagency agreements with other agencies to coordinate the transition of children and youth who have either serious emotional disturbance or developmental disabilities to the next age-appropriate services.

Establish inter-divisional agreements to assure that people who have co-occurring mental health and developmental disabilities are served appropriately.

The mental health and mental retardation service divisions act as autonomous organizations, which may be appropriate for many functions. However, there are numerous areas of joint responsibility for people with co-occurring conditions for whom planning is needed. Clearly articulated agreements by the divisions would facilitate service delivery at the local level.

The Commission recommends that inter-divisional agreements be developed to facilitate services and supports for people, especially those with co-occurring conditions.

Promote typical housing options for consumers.

Inadequate housing was one of the most frequently mentioned concerns of adults expressed during public hearings held statewide about Title 33. Supportive living facilities are an important resource but should not be the prevailing or only option since it is not a typical residential setting.

The Commission's legislative recommendations provide authority for the Department to establish a revolving loan program for housing without specifying whether the program would be focused on individuals or agencies. That authority alone will not assure that housing options increase. Focused policy planning will be necessary to promote housing options to be made more available and secure for consumers who too often are given short shrift by landlords and neighbors.

The Commission recommends renewed attention to development of housing options and protection for consumers under The Uniform Residential Landlord and Tenant Act.

Promulgate rules in certain areas to support Title 33.

The Commission recommends the Department promulgate rules in these areas:
- administration of psychotropic medications for children
- confidentiality,
- conflict resolution,
- functions of Treatment Review Committees,
- reimbursement,
- 24-72 hour observation, assessment, treatment services,
- civil penalties for Licensure violations, and
- surrogate decision-making.

Review areas of Title 33 in more depth.

Areas to be reviewed include:
- provisions for continuing claims for payment for services from the state,
- independent review of residential services in addition to developmental centers for people with developmental disabilities,
- provisions for voluntary admissions of children in state custody,
- follow-up for persons who are denied admission for hospitalization for mental illness or serious emotional disturbance,
- Interstate Compact

All of the legislative recommendations of the Title 33 Revision Commission are included in Public Chapter 947 of the Acts of 2000, which can be found at

http://www.state.tn.us/sos/acts/acts.htm

An Unofficial Compilation of the Tennessee Mental Health and Developmental Disabilities Laws (Public Chapter 947 of the Acts of 2000) is on the TDMHDD web page; click Title 33. The web site for TDMHDD is

http://www.state.tn.us/mental

	Recurring	One time
Service Inventory System To be used for Planning, Information and Referral, Licensure Assumptions ▪ Provider list will be maintained by state employees ▪ Contract positions, software development are one time cost , yr. 1 ▪ Hardware cost will be higher in first year Detail: Administrative Services Director 1 $69,700 Administrative Services Assistant 3 53,700 Data Entry Operator 39,500 Contract 2 pos. 6 mos. for information gathering 60,000 Software development 56,350 Hardware 37,000	$174,850	$141,400
Planning & Policy Councils Assumptions for Statewide Council ▪ 4 meetings per year for 18 people ▪ Replaces Statewide Board of Trustees Detail: 4 meetings @ $1650 ea. Assumptions for Service Area Councils ▪ Costs of MH Planning Councils can be used as basis for DD Councils ▪ Assure planning for children; add 5% of new costs. ▪ Includes all activities of statewide and regional planning committees.	$6,600 $182,000 $9,100	
Information & Referral System Assumptions ▪ Costs of DD I&R system are basis for expansion to MH system ▪ Toll free line expanded to cover MH services ▪ Statewide Directory of Services ▪ Calendar of events posted on Website ▪ Assure system for children; add 5% of new costs. ▪ One time costs are included in Service Inventory System (above)	$104,500 $5,225	
Plan Expansion to Developmental Disabilities Assumptions ▪ Law permits one year to plan for expansion ▪ Planning activities include at least ▪ Identifying persons eligible for services ▪ Overall needs assessment ▪ System development ▪ Establish criteria for eligibility generally ▪ Establish criteria for priorities for service provision ▪ Identifying revenue sources (both existing and new) ▪ Overall budget impact ▪ Planning activities could be by contract Detail: Policy Analyst or DMHMR Director 30 $48,500 Administrative Services Assistant 33,400 Operations 14,000 Research and Development 60,000		$155,900
Svs for People with Developmental Disabilities	Amount TBD	

	Recurring	One time
Licensure Assumptions ▪ Extension of Licensure to services will increase number of licensees by approximately 250 (assume 100 addresses/surveyor). ▪ Costs of monitoring may exceed fees. Detail: Costs: 2.5 Program Specialists 2 @ $31,000 $77,500 Inclusive of Operations Revenue: Fees vary; amounts based on averages. $134,000 $56,500		
Mandatory Prescreening Authority Assumptions ▪ Expansion of MPA for all publicly funded hospitalizations will require training, monitoring, certification process ▪ Actual costs of MPA service will be covered by TennCare ▪ Personnel requirements Social worker $41,500 Administrative secretary .5FTE 13,700 Operations 14,000	$69,200	
Community Services for Offenders w/MR Assumptions ▪ Amount is subject to annual appropriations ▪ Amount cannot be diverted from appropriations for other MR/DD svs. ▪ Persons covered are currently a cost to the system but no transfer of resources is expected ▪ Total is estimated based on case reviews of 35 people currently in need of services and the highest number of cases in the last five years.	$260,000	
Interagency Planning for 17 Year Olds in Custody Assumptions ▪ Systems planning for 17 year old youths with SED in state custody can be built into existing individual case planning. ▪ Requires coordination from central office staff, .5FTE social worker Detail: .5 FTE social worker @ $41,500 inclusive of operations: $20, 750	$20, 750	
Services to People with Severe Impairment There do not appear to be new costs associated with the service. Admission to this service should reduce reliance on emergency hospitalization, which is currently reimbursable under TennCare.		
ESTIMATED COSTS **TOTAL RECURRING + ONE-TIME: $1,129,525**	$832,225	$237,300

SUMMARY OF THE PROCESS TO REVISE TITLE 33

The Governor established the Title 33 Revision Commission in the late summer of 1998. Commission members were appointed in September. The membership was composed of representatives of consumers, family members, professionals, advocates, providers and legislators with mental health, mental retardation, developmental disabilities and children's interests and expertise. A representative of the Governor's Office and state agency executives for Mental Health and Mental Retardation, Health, Alcohol and Substance Abuse and Children's Services served as ex-officio members. The Commission Chair and Vice-Chair were named when members were appointed. A Director was selected in mid-October. The Department of Mental Health and Mental Retardation (the Department) pledged additional staff support sufficient to accomplish the project within the timeframe, July 1998 through January 2000.

The Commission's mandate was to perform a comprehensive review of Title 33 and to make recommendations for revision. Although there had been changes made to the law periodically, there had been no comprehensive review of Title 33 since its origination in 1965. The Commission chose to form recommendations as legislation to the extent possible, and to augment legislative recommendations with narrative recommendations for the issues that were outside the scope of Title 33 or important, but not legal issues.

For the most part, the original composition of the Commission was maintained throughout the process; however, two new members were named to replace individuals who were unable to complete their appointments. Commission members participated fully, giving time, expertise, guidance and personal commitment to the process. Decision-making was primarily by consensus. Votes were taken when consensus was reached or when it was apparent that there was no consensus and that a decision was required. A simple majority of the voters prevailed. All members were considered to be equal members. Ex-officio members typically did not vote but they did participate fully in discussions and consensus building.

Study Committees were developed to review specific areas of Title 33: Powers and Duties, Mental Health Services, Mental Retardation Services, Children's Issues, Transportation, Privileges and Responsibilities, Interstate Relations, and Definitions and Housekeeping. Individuals were added to participate in study committees with membership consistent with the composition of the Commission. The commitment of study committee members was remarkable and essential to the productivity of the Commission. Between February and June each committee met frequently to complete the review of their areas and to make recommendations to the Commission in lay terms on improvements. Each committee had independent legal support. The role of the attorneys was to guide the committees toward lawful solutions to issues. Work groups supplemented study committees when it was necessary to finalize specific areas of concern. For two meetings, study committee members met and focused on an area other than the one on which they had been working. The purpose was to review and

challenge the study area recommendations from the perspective of their committee. This was a surprisingly useful way to uncover similarities, inconsistencies and omissions among the recommendations. Study committee recommendations were distinguished as unique or were cross-referenced for consideration by the Commission and served as the basis for "consent recommendations" or "structured proposals" that led to the development of language for legislation.

Independent legal support for each committee was provided by attorneys who were in private practice, with the Legislature, with Legal Aid, or with Vanderbilt University. Their purpose was to guide the committees toward lawful solutions to issues and to assist with research. One attorney was specifically responsible for researching laws of other states. Continuing Legal Education credits were authorized by the Board of Certification and Specialization for attorneys who participated in specific aspects of the project.

The drafter of the legislative recommendations was one highly qualified person experienced in drafting and in the substantive areas of mental health and mental retardation law who worked closely with staff and other attorneys from mid-July through the end of the project.

Staff provided a backbone of support to the Commission and the study committees. Staff were considered to be full members of the committees. Their expertise in professional areas, knowledge of functioning systems, strengths and shortcomings of the law, ability to access information, and ability to produce were essential contributions without which the Commission could not have met its goals. Staff provided invaluable information, research, technical assistance and guidance to the Commission during its meetings. The Commission and the Director are indebted to this group of senior staff and grateful to the Department for dedicating staff of this caliber to the project.

Independent reviewers who had not been involved in the project otherwise were enlisted to provide critical review and comment on the drafts of legislation and narrative recommendations. Reviewers included former Commissioners of the Department, a developmental disabilities consumer, a legislative watch-dog and activist, a person involved in social justice activities in the community, and a representative of juvenile court judges.

Office management was provided by a very able Administrative Assistant responsible for materials production, technical assistance for development of documents, collecting other states' statutes from the world wide web, maintaining the interface of the software systems within the Department and with University of Tennessee, College of Law, minutes of Commission meetings, and who served as a primary point of contact for all people involved or interested in the project. A second Assistant provided support to the Commission and to the office, dealt with materials production and also drafted, formatted and finalized the Commission newsletter, *The Title 33 Report*, which was sent monthly to over 1500 constituents statewide.

Project management was provided by the Director.

Major activities of the Commission and staff included

- monthly meetings of the Commission;
- testimony from consumers, families, constituents and interests groups;
- expert testimony about legislative and legal activities nationwide;
- chairing and staffing study committees;
- independent legal support for each of the committees;
- participation in and staffing of work groups following completion of recommendations from the study committees;
- statewide public hearings;
- review of other states' laws;
- review and action on study committee recommendations;
- education about construction of legislation;
- collaboration with independent legal support for the committees and the Commission;
- review and action on recommendations as legislation;
- review and action on narrative recommendations;
- review and input from independent reviewers;
- review and action on estimated costs of legislative recommendations;
- monthly newsletter to approximately 1500 constituents summarizing the Commission's activities;
- publication of the last drafts of the legislative and narrative recommendations on the Department's web page for public review and comment; and
- periodic evaluation of the materials, process and meeting logistics.

Summary of Activities Related to Monthly Commission Meetings

November 1998. At its first meeting the Commission:

- Heard an overview of existing Title 33, its strengths and shortcomings.
- Considered principles of services which would become the foundation for the recommendations and the standard used to gain consensus. The principles are now reflected throughout the recommendations.
- Considered and agreed upon an organization and timeline for the project.

December, 1998 and January, 1999

The Commission:

- Approved study committee areas and finalized study committee membership. Commission members who were not ex-officio members served as chairs of each committee. The Commission authorized staff to define terms and recommend changes to Title 33 to assure internal continuity, update language without changing content, and revise highly technical aspects of the law.
- Adopted caveats which had emerged from the discussion in the initial Commission meeting:
  - Use "people first" language in discussions and recommendations;

    - Consider multiple or co-occurring disorders at all times;
    - Consider how to create incentives to support normal experiences;
    - Promote decriminalization of mental illness; and
    - Foster budget responsibility.
- Heard overviews of the Mental Health system, Mental Retardation system and TennCare Partners Program.
- Heard comments from Departments of Children's Services, Human Services, Education and Alcohol and Substance Abuse Services.
- Heard testimony from invited presenters: Community Rehabilitation Agencies of Tennessee, Developmental Disabilities Council, Parent Guardian Association, Mental Health Association of Middle Tennessee, National Alliance for the Mentally Ill-Tennessee, Tennessee Association of Mental Health Organizations, Tennessee Association of Residential Rehabilitation Services, Tennessee Disabilities Coalition; Tennessee Mental Health Consumers Association, Tennessee Protection and Advocacy, Inc., Tennessee Psychiatric Association, and The Arc.
- Heard and discussed presentations on national perspectives and case law by John Petrila, J.D., Department of Mental Health Law and Policy, University of South Florida, Florida Mental Health Institute, and Bob Gettings, Executive Director, National Association of State Directors of Developmental Disabilities Services.
- Some study committees began to meet.

February through June, 1999

Commission activities included:

- Chairing study committees. Scheduled Commission meetings were used primarily for Study Committee meetings. In addition, the committees met in subcommittees and as frequently as necessary to complete the reviews and formulate recommendations. Staff of the Department staffed all committees. The charge to the committees was to
    - Review the areas of Title 33 which related to the study area thoroughly,
    - Make recommendations in lay terms.
- Reporting the status of the committee work and deliberations monthly at the Commission meetings.
- Preview of drafting principles and a process to develop recommendations as legislation.
- Public hearings in these locations: Johnson City, Chattanooga, Knoxville, two in Nashville, Memphis and Jackson

July and August, 1999

The Commission:

- Familiarized themselves with all study committee recommendations. Recommendations from all committees were summarized and cross-referenced for similarities and differences.
- Authorized staff to develop "structured proposals", an approach to
    - group and analyze multiple recommendations from all committees focused on themes or issues,

- formulate content for legislation when there appeared to be consensus,
- propose alternatives for content when there was not consensus,
- assure the Commission's familiarity with the issues, and
- get definitive action on issues.

August and September, 1999

The Commission:
- Adopted a set of consensus recommendations, that is, those that had been recommended by multiple committees and had support or that had been proposed by only one committee and appeared to have support of the Commission in its entirety.
- Began taking action on Structured Proposals.

October and November, 1999
The Commission:
- Reviewed the first rough draft and the second full draft of recommendations as legislation.
- Acted on structured proposals.
- Reviewed the first draft of Narrative Recommendations.
- Began to get input from the independent reviewers who were asked to critique the drafts.

December, 1999
The Commission:
- Reviewed the remaining areas of draft recommendations as legislation which required decisions.
- Reviewed and approved Narrative Recommendations in principle.
- Reviewed initial rough cost estimates of the recommendations.
- Authorized draft to be placed on the Department's web page.

January, 2000
Last actions of the Commission were to:
- Approve the final draft of the recommendations as legislation and the Narrative Recommendations.
- Acknowledge the cost estimates for the recommendations.
- Authorize the recommendations to be presented to the Governor.

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DRAFTER OF PROPOSED LEGISLATION

Grayfred B. Gray, Associate Professor of Law